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February 14, 2003

From: Thomas A. Ryan

Matter No.: 354735

To:	Company:	Fax Number:
William E. Muno	USEPA	312-353-9306

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February 14, 2003

**VIA OVERNIGHT DELIVERY  
AND FACSIMILE: 312-353-9306**

Mr. William E. Muno (S-6J)  
Director, U.S. Environmental Protection Agency  
Regent 5  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590

**Re: Sauget Area 2 Site--Groundwater Operable Unit, Sauget, Illinois  
Notice under Section 122(a) of CERCLA and Unilateral  
Administrative Order**

Dear Mr. Muno:

I am writing this letter on behalf of Browning-Ferris Industries, Inc. and BFI Waste Systems of North America, Inc., successor to Browning-Ferris Industries of St. Louis, C&E Hauling, Hilltop Hauling and The Trash Men, Inc. ("BFI parties"). Please note that Browning-Ferris Industries of St. Louis, Inc., Browning-Ferris Industries, Inc. and Trash Men, Inc. are identified in paragraph 19 of the Unilateral Administrative Order ("UAO") and, are therefore considered "respondents," but they were not recipients of your October 3, 2002 letter as detailed in your Attachment 1.

The BFI parties joined with a number of other Potentially Responsible Parties ("PRP") in a November 12, 2002 letter to you requesting that EPA extend the deadline for responding to your letter and the effective date of the UAO to January 31, 2003. You agreed to extend our deadline to respond until January 15, 2003. You later granted us an additional extension until February 14, 2003.

In the UAO, EPA identifies at least seven different source areas for the claimed groundwater contamination. Of those seven, the BFI parties are alleged to be generators and/or transporters at "sites Q and/or R," and also are described as "non-site specific generator/transporters."

CC 1109977v1

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February 14, 2003  
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The BFI parties' investigation shows that, among the numerous alleged source areas, their only possible involvement was as a transporter to site Q. For at least three reasons, however, the BFI parties have "sufficient cause" for not giving unequivocal consent to comply with the UAO<sup>1</sup>. First, only a small portion of site Q, the "dogleg," is considered a source area. BFI parties are aware of no evidence to indicate any waste they hauled was disposed of at the "dogleg." Second, to be liable as a transporter under CERCLA Section 107(a)(4), it must be proven that the alleged transporter selected the site for disposal. BFI parties are aware of no evidence to indicate they selected the "dogleg" section, or any other section, of site Q for disposal of any waste they hauled. Finally, to be liable as a transporter under Section 107(a)(4) of CERCLA, it must also be proven that the transporter hauled hazardous substances. The BFI parties are aware of no evidence to indicate that they hauled hazardous substances to the "dogleg" section, or any other part, of site Q. The BFI parties request that EPA consider these sufficient causes under CERCLA Section 106(b) for not giving their unequivocal consent to comply with the UAO. If you would like additional information about these causes, please contact me.

As you know, the BFI parties joined with nine other PRPs (the Sauget Area 2 Sites Group) to perform a remedial investigation/feasibility study ("RI/FS") with respect to five disposal sites (Sites O, P, Q, R and S) that have been aggregated by the agency and referred to collectively as Sauget Area 2. That work is being performed under the terms of an Administrative Order on Consent ("AOC") issued pursuant to § 122 of CERCLA. The Statement of Work accompanying the AOC requires extensive soil and groundwater evaluation of all the disposal sites as well as river sediment adjacent to some of the sites. Most of the field work and river sampling have been completed and the Sauget Area 2 Sites Group anticipates submitting a draft RI/FS and related reports to the agency in 2004. As demonstrated by its willingness to execute the AOC and contribute financial and technical expertise to that project, the BFI parties continue their corporate policy of cooperation with EPA and other PRPs.

As acknowledged by EPA at the meeting in Chicago on November 6, 2002, it is impossible for the BFI parties to comply with the UAO because Solutia is already performing the required work. Instead, the BFI parties have made, along with other PRPs, a good faith cash offer to Solutia to help it fund the work it is performing under the UAO. Therefore, even though the BFI parties have sufficient cause to not comply with the UAO, they have, in fact, complied in the only possible way. Negotiations are

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<sup>1</sup> Moreover, the data generated to date reveals that all, or almost all, of the contamination being addressed by the UAO arises from Site R or the Krummrich plant, both of which are exclusively controlled by Solutia.

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continuing and, assuming confidentiality concerns of the other parties are satisfied, the BFI parties are more than willing to allow EPA to monitor the negotiations.

This letter, of course, is sent without any admission of any question of fact or law or any waiver of any claim or defense. Also, in an effort to keep this letter to a reasonable length, the BFI parties incorporate by reference the "sufficient cause" letters received from the other PRPs to the extent they do not contradict anything in this letter. Please contact me if you need any additional information or if you would like to discuss any of the issues addressed.

Sincerely yours,

LATHROP & GAGE L.C.

By:

A handwritten signature in black ink, appearing to read 'Tom Ryan', with a stylized flourish at the end.

Thomas A. Ryan